



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Paper No. 4

Kevin McMahon
Weil, Gotshal & Manges
767 Fifth Avenue
New York, NY 10153

COPY MAILED

JAN 8 1999

In re Application of
Paul J. Berlowitz, et al
Application No. 08/971,254
Filed: November 17, 1997
For: SYNTHETIC DIESEL FUEL AND
PROCESS FOR ITS PRODUCTION

:
:
:
:
:
:

SPECIAL PROGRAMS OFFICE
PAC FOR PATENTS

DECISION GRANTING
PETITION

This is a decision on the petition filed May 4, 1998, requesting that the above-identified application be accorded a filing date of November 17, 1997. The delay in responding is regretted, but, the application was recently referred to the Office of Petitions for consideration.

A review of the record discloses that the application was deposited on November 17, 1997, requesting a continuation application 37 CFR 1.62 of prior Application No. 08/544,345. However, the prior application issued as U.S. Patent No. 5,589,031 on November 13, 1997. Accordingly, on March 27, 1998, a Notice of Improper FWC Filing was mailed. It is noted that the filing included a complete specification, which is also improper under 37 CFR 1.62.

In response on May 4, 1998, the present petition was filed wherein petitioners indicate that the application was inadvertently filed pursuant to 37 CFR 1.62. Petitioners explain that, although no copy of the declaration from the prior application was included, the filing was intended under 37 CFR 1.60. Petitioners requests, in effect, that the PTO disregard

[Faint, illegible text at the bottom of the page, possibly a footer or reference to a related document.]

the 37 CFR 1.62 request and treat the application as a continuation application [under 37 CFR 1.60] or an application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

While petitioners suggest that the application was intended under 37 CFR 1.60, petitioners did not submit application papers in compliance with 37 CFR 1.60 on November 17, 1997, i.e., a true copy of the prior complete application and statement verifying such as a true copy, nor did petitioners submit any missing items required under former 37 CFR 1.60 with the present petition. Accordingly, the petition is being construed as a request to convert the application to a filing under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The petition is granted.

Applicants are given ONE MONTH from the date of this decision to file an oath or declaration complying with 37 CFR 1.63 and to pay the \$130.00 surcharge set forth in 37 CFR 1.16(e). This time period may be extended pursuant to 37 CFR 1.136(a). The oath or declaration should identify the specification to which it is directed by reference to the above application number and filing date. The response should be directed to the attention of Application Processing Division. Failure to respond will result in the abandonment of this application.

The application is being returned to Application Processing Division for reprocessing with a filing date of November 17, 1997, as a continuation application under 35 U.S.C. 111(a) and 37 CFR 1.53(b), not an application under 37 CFR 1.62, using the specification and drawings filed November 17, 1997, and the declaration filed in response to this decision.

Sherry D. Brinkley
Sherry D. Brinkley
Petitions Examiner
Office of Petitions